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SOCIAL DEVELOPMENT

Crime prevention and criminal justice

Report of the Secretary-General

SUMMARY

This report is submitted in response to paragraph 24 of Economic and Social Council resolution 1989/68 and paragraph 9 of resolution 1989/59. It summarizes the action taken by the General Assembly at its forty-fourth session, the progress made in the preparations for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and other programme activities. Particular emphasis is placed on the review of the functioning and programme of work of the United Nations in crime prevention and criminal justice and on the African Institute for the Prevention of Crime and the Treatment of Offenders.

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CONTENTS

		Paragraphs	Page
INTRODUCTION		1 - 3	3
I.	ACTION BY THE GENERAL ASSEMBLY	4	3
II.	CONTINUATION OF PREPARATIONS FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS	5 - 6	3
III.	TECHNICAL CO-OPERATION ACTIVITIES	7 - 24	4
	A. Interregional advisory services	8 - 11	4
	B. Interregional Seminar on Corruption in Government	12 - 17	5
	C. Co-operation with the United Nations Fund for Drug Abuse Control	18	6
	D. Co-operation with the Human Rights Advisory Programme	19 - 21	6
	E. Other activities	22 - 24	7
IV.	UNITED NATIONS AFRICAN INSTITUTE FOR THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS	25 - 30	7
V.	CO-ORDINATION OF ACTIVITIES	31 - 33	9
VI.	INFORMATION NETWORK AND INFORMATION EXCHANGE	34 - 36	9
VII.	IMPLEMENTATION OF UNITED NATIONS STANDARDS AND NORMS IN CRIMINAL JUSTICE	37 - 44	10
VIII.	PROGRAMME PLANNING	45	12
IX.	REVIEW OF THE FUNCTIONING AND PROGRAMME OF WORK	46 - 50	12
X.	CONCLUDING REMARKS	51 - 56	13

INTRODUCTION

1. This report has been prepared in response to Economic and Social Council resolution 1989/68 on the review of the functioning and programme of work of the United Nations in crime prevention and criminal justice. In operative paragraph 24, the Secretary-General was requested to submit to the Council, at its first regular session of 1990, a progress report on the implementation of that resolution, paying particular attention to paragraph 4 of Economic and Social Council resolution 1986/11, paragraphs 3 (a) and 4 of Council resolution 1987/53, and paragraph 5 of General Assembly resolution 42/59.

2. In pursuance of paragraph 9 of Council resolution 1989/59, the present report also contains information on further steps taken to establish the African Institute for the Prevention of Crime and the Treatment of Offenders and to ensure adequate support for its activities.

3. The present document complements the report of the Committee on Crime Prevention and Control on its eleventh session (E/1990/31), which is also before the Council.

I. ACTION BY THE GENERAL ASSEMBLY

4. The General Assembly, at its forty-fourth session, adopted resolution 44/72 on crime prevention and criminal justice in which it proposed a series of measures to reinforce international co-operation and national action in this field and to ensure the success of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Assembly also adopted resolution 44/71 on international co-operation in combating organized crime, which emphasized the growing threat posed by this form of criminality and the urgent need for more effective collaborative action against it. The Assembly also adopted resolution 44/162 on human rights in the administration of justice, which stressed the importance of the United Nations norms and standards in this area and their effective implementation.

II. CONTINUATION OF PREPARATIONS FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

5. By its resolution 1989/69, the Council decided that the theme of the Eighth Congress should be "International co-operation in crime prevention and criminal justice for the twenty-first century". The Congress will endeavour to devise and promote more effective means of international co-operation against mounting criminality; discuss penal sanctions, as well as the treatment and protection of young persons in conflict with the law; and review the implementation of the existing United Nations standards and guidelines in crime prevention and criminal justice.

6. The Committee on Crime Prevention and Control, at its eleventh session, recommended for transmission to the Congress through the Council new draft instruments and recommendations which should make a significant contribution to the process of developing international law and standards in this field (E/1990/31, chap. I, sect. C).

III. TECHNICAL CO-OPERATION ACTIVITIES

7. Practical aid is being provided to an increasing number of interested Governments in response to the growing need for viable crime prevention policies, accentuated by the widening reach of transnational crime, and in order to assist with appropriate criminal justice reforms.

A. Interregional advisory services

8. The need for such assistance is reflected in the large number of requests for the interregional advisory services. Between March 1989 and April 1990, the Interregional Advisor in Crime Prevention and Criminal Justice carried out missions to the following countries: Argentina, Brazil, Costa Rica, Cyprus, Egypt, Ethiopia, Haiti, Iraq, Jordan, Mauritius, Paraguay, Saudi Arabia, Syrian Arab Republic and Thailand. He also consulted with the regional commissions, the United Nations institutes for the prevention of crime and the treatment of offenders and with intergovernmental and non-governmental organizations.

9. Advisory services were provided on a range of subjects, including legal reform; the establishment of crime prevention councils or other mechanisms, improving access to justice, especially for the poor or marginalized segments of society; upgrading the capability of law enforcement and criminal justice personnel to deal with sophisticated new forms of transnational crime, especially drug trafficking; and reduction of prison overcrowding and correctional reforms, with emphasis on non-institutional alternatives and staff training.

10. Special attention has been given to juvenile delinquency and the growing numbers of "street children", exacerbated by factors such as population displacement, weakening family and community ties and drug abuse. Preventive and protective strategies and improved "juvenile justice" have been a major area of advisory services, and innovative project proposals have been developed for children in difficult circumstances or in conflict with the law.

11. One of the prime aims has been to help countries to translate United Nations norms and guidelines into concrete terms, as well as to foster follow-up programmes designed to consolidate the gains made. While these activities have been limited by scarcity of resources, they are opening new prospects for an enhanced role of law and criminal justice in promoting equity, social justice and human rights in the context of development and multilateral technical co-operation. The Interregional Adviser also visited potential donor countries, including Italy, Japan, Spain and the United States of America, in order to obtain financial support for projects in developing countries.

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B. Interregional Seminar on Corruption in Government

12. In co-operation with the Department of Technical Co-operation for Development, an Interregional Seminar on Corruption in Government was held at The Hague, from 11 to 15 December 1989, at the invitation of the Government of the Netherlands. It was attended by some 50 participants from 30 countries and a number of observers. The Seminar noted that the problems of administrative and political corruption were universal and, while they exerted a particularly pernicious effect on countries with vulnerable economies, they had world-wide repercussions. The participants reviewed the major causes and forms of corruption in government, exchanged experiences and views on ways of improving public management processes and procedures, and evaluated measures taken by Governments to combat corruption. They also considered a draft manual on practical measures against corruption, for submission to the Eighth Congress.

13. The Seminar recognized the importance of democratic institutions, a free press, the rule of law, the independence of the judiciary, and the creation of a political, socio-economic and administrative environment in which the public and civil services could operate without improper interference. It recommended that policies against corruption be included in development plans and strategies, and that they be implemented and monitored by specialized bodies.

14. The Seminar also recommended a range of preventive measures, including economic competition; deregulation; restructuring of the civil service; professionalization with adequate remuneration, training and adherence to a code of ethics; parliamentary democracy; increased public accountability; freedom of the press; raised public awareness through education and media campaigns; provision of adequate channels for complaints, and effective action on them (ombudsmen, independent commissions of inquiry, administrative tribunals, inspectorates or vigilance commissions); obligatory disclosure of assets or investments and of conflicts of interest; proper auditing of government agencies and suppliers; improved banking and financial regulations; and mechanisms to prevent capital flight, tax and customs evasion.

15. Among the measures urged were periodic reviews of the adequacy of legislation and sanctions against corruption; swift, fair and equitable judicial processes; strategic planning for investigative bodies; interdisciplinary investigative task forces; enhanced co-operation by witnesses through protection from retribution and financial rewards; forfeiture and confiscation of corruptly gained assets, and provisions against money laundering.

16. The Seminar drew attention to the connection with organized crime, particularly drug trafficking, which could subvert entire Governments and render financial systems dependent on "narcodollars". It underlined the widening scope of such problems with the transnationalization of crime, and the need for commensurate counterstrategies, both regional and international.

17. In calling for strengthened co-operation among States against corruption, the Seminar recommended mutual assistance in criminal justice matters and more effective extradition procedures; technical co-operation and assistance to

strengthen national machinery and promote integrity in tendering international aid projects; the sharing of information about anti-corruption laws and techniques, including research results; the elaboration of an international code of conduct for public officials and monitoring of compliance with it; and the inclusion of corruption in the study of an international criminal jurisdiction.

C. Co-operation with the United Nations Fund for Drug Abuse Control

18. The shared objectives and concerns of the United Nations Fund for Drug Abuse Control and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna have, as recommended by the Committee on Crime Prevention and Control, given rise to some joint operational projects. Thus, a project for strengthening the criminal justice system and drug abuse prevention and control in Uganda was begun with support from the Fund and the United Nations Development Programme (UNDP). It covers the training of police, judges and prosecutors, as well as providing advisory services and equipment. The Branch is assisting a project on the establishment of specialized drug courts in Bolivia and has formulated a proposal for the treatment of prisoners in Argentina infected with acquired immunodeficiency syndrome (AIDS). With the assistance of the Fund, the services of a senior law enforcement expert were provided for a review of the police situation in Ghana and the development of a project proposal for the establishment of a Senior Police Officers' School at Accra. Regional and subregional projects for joint implementation have also been submitted, for instance on mutual assistance in criminal matters for African countries of the Economic Community of West African States (ECOWAS) and the Economic Community of the Great Lakes States (CEPGL).

D. Co-operation with the Human Rights Advisory Programme

19. Progress has been made in strengthening technical co-operation in the area of human rights in the administration of justice and in developing operational co-operation with the Centre for Human Rights. In pursuance of General Assembly resolution 44/162 and previous resolutions on this subject, joint activities have been undertaken under the United Nations Human Rights Advisory Programme. Advisory services were rendered to the Government of Colombia, and a follow-up training course on human rights in judicial inquiry was organized at Rome in September 1989, in co-operation with the Government of Italy, the Centre for Human Rights and the United Nations Interregional Crime and Justice Research Institute. The Crime Prevention and Criminal Justice Branch collaborated in a Seminar on Human Rights in the Administration of Justice held in Moscow.

20. In pursuance of paragraphs 1 and 5 of Economic and Social Council resolution 1989/65, a workshop on techniques (particularly forensic procedures) for the investigation of arbitrary and summary executions was organized by the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) in co-operation with the Minnesota Lawyers' International Human Rights Committee, from 24 to 28 October 1989, in San José, Costa Rica.

21. Joint implementation of training projects on human rights in the administration of justice is being undertaken with the Centre for Human Rights, for example, in Ghana, Haiti and Paraguay, and others are foreseen in collaboration with the Henri Dunant Institute. The United Nations Office at Vienna was represented at the second meeting on inter-agency co-operation in advisory services and technical assistance in human rights, organized by the Centre for Human Rights at Geneva on 12 March 1990.

E. Other activities

22. In accordance with paragraphs 16 and 17 of Council resolution 1989/68, calling for intensification of the operational aspects of the United Nations crime prevention and criminal justice programme, a number of activities have been undertaken and planned, with the help of donor agencies and countries, for follow-up at the national level.

23. In response to a request from the Government of Ethiopia, the Department of Technical Co-operation for Development has provided a consultant to advise on crime statistics and computerized criminal justice data bases. An expert in this field is also advising the Government of Nigeria in a UNDP-supported project, and similar services have been provided to Mauritius and Paraguay. Funds have also been provided by UNDP for training activities, including national criminal justice workshops in Liberia and Malawi. Juvenile justice projects have been formulated in Brazil, Ethiopia, Swaziland and Thailand and have also been submitted to potential donors.

24. On 9 October 1989, a memorandum of understanding on co-operation in crime prevention and criminal justice was signed in Moscow by the Director-General of the United Nations Office at Vienna and the Minister of the Interior of the Union of Soviet Socialist Republics. It provides for collaborative activities between the Ministry, the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, the United Nations Interregional Crime and Justice Research Institute in Rome and the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations. Activities envisaged include, inter alia, a research workshop on the prevention of organized crime; a seminar on drug abuse control; a training course on computer technology and police work; and a seminar on crime prevention through environmental design.

IV. UNITED NATIONS AFRICAN INSTITUTE FOR THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

25. At the fourteenth session of the Conference of African Ministers, held at Niamey, Niger, from 14 to 18 April 1988, the Statute of the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI) was adopted and Uganda selected as the host country. The Statute of the Institute was signed by 26 countries; (10 signatures were required for its entry into force): Burundi, Congo, Egypt, Equatorial Guinea, Gambia, Ghana, Guinea, Libyan Arab Jamahiriya, Malawi, Morocco, Mozambique, Niger, Nigeria, Rwanda, Senegal,

Seychelles, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Republic of Tanzania, Zaire, Zambia and Zimbabwe. Several other States have declared their intention to sign. The Institute is to be financed through contributions from African States, based on the Organization of African Unity (OAU) scale of assessments, with initial support from UNDP, which has earmarked $US 2 million for the Institute in 1990-1993. The OAU Council of Ministers, at its last session, held from 19 to 24 February 1990, adopted a resolution urging those of its members which had not yet done so to sign the Statute and to make contributions in cash and in kind.

26. In accordance with the Statute, the Conference of Ministers of the Economic Commission for Africa (ECA) selected the following countries to represent the various African subregions on the Institute's Governing Board: Botswana, Central African Republic, Egypt, Equatorial Guinea, Morocco, Rwanda, United Republic of Tanzania and Zaire. The host country, Uganda, is also a member. The inaugural meeting of the Board was held in Kampala from 14 to 15 June 1989, chaired by the Executive Secretary of ECA and officially opened by the President of Uganda. The Board adopted its terms of reference and rules of procedure, as well as the Institute's staff rules and regulations. It approved the UNDP project document and the Institute's proposed programme of work for 1989-1993. The Board further considered the financing of the Institute and the responsibilities of the participating States. The host country agreement was signed at the closing ceremony. The Board also agreed on procedures for the selection of the Institute's director and deputy director.

27. At an extraordinary session, in Addis Ababa on 13 August 1989, the Board approved the appointment of the Director and Deputy Director of the Institute, who have since assumed their functions. At the same meeting, a progress report on the UNDP project proposal was considered, including the designation of the Department of Technical Co-operation for Development and the Centre for Social Development and Humanitarian Affairs as associated agencies. A status report was also given on the facilities and financial contribution provided by the host country.

28. The premises and residential facilities of the Police Training College, Kampala, are being readied for occupancy by the Institute, which is scheduled to launch its programme of activities in its permanent location in July 1990. A comprehensive programme of training, research, information, advisory services and collaborative action has been envisaged to help the States of the region to deal effectively with crime and justice problems in the context of development and the increasing transnationalization of crime.

29. The Director of the Institute attended the annual co-ordination meeting of the heads of the United Nations institutes for the prevention of crime and the treatment of offenders and representatives of the Crime Prevention and Criminal Justice Branch, held at Riyadh in January 1990. He also participated in the eleventh session of the Committee on Crime Prevention and Control.

30. Consultations are under way to assess the special requirements and priorities of African States in crime prevention and criminal justice and to mobilize the urgently needed funding. In this connection, the attention of the Council is drawn

particularly to the draft resolution of the Committee on Crime Prevention and Control on this subject.

V. CO-ORDINATION OF ACTIVITIES

31. Major efforts were made during the year to strengthen co-operation and co-ordination with the United Nations institutes, the specialized agencies, other relevant United Nations entities and other organizations. The annual co-ordination meeting, held at Riyadh from 13 to 15 January 1990 with the support of the Arab Security Studies and Training Centre, provided an admirable opportunity for joint planning of Congress-related activities.

32. With technical support from the United Nations Educational, Scientific and Cultural Organization (UNESCO), the model treaty on the prevention of crimes against cultural heritage, developed with the assistance of ILANUD, was approved by the Committee for transmission to the Eighth Congress. A collaborative project on the treatment of AIDS in prison, carried out in co-operation with the World Health Organization (WHO), is being completed. It has also been possible to strengthen the collaboration with other United Nations entities, such as the Centre for Human Rights, in the area of the administration of justice. Close contact was maintained with the Centre and the United Nations Children's Fund (UNICEF) in the finalization of the draft Convention on the Rights of the Child, with a view to aligning relevant parts of the text with the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the draft guidelines on delinquency prevention and the new rules on the treatment of juveniles deprived of their liberty. Co-operation with the Office of Legal Affairs has also been established on the prevention and control of terrorism and the possible creation of an international criminal court.

33. Co-operation with non-governmental organizations has been further reinforced, and collaboration with criminological centres, such as the Australian Institute of Criminology, has been institutionalized. The establishment, in the near future, of the professional and scientific advisory council, called for by the Economic and Social Council in paragraph 23 of its resolution 1989/68, with extrabudgetary funds provided for this purpose by the Government of Italy, should significantly help in this endeavour.

VI. INFORMATION NETWORK AND INFORMATION EXCHANGE

34. The International Review of Criminal Policy has again been published, with a double issue on juvenile delinquency. A special volume on capital punishment has also been printed in collaboration with the Oxford University Press. The Newsletter is sent to all national correspondents and interested institutions and experts.

35. The United Nations Crime Prevention and Criminal Justice Information Network, established with the co-operation of the New York State University at Albany, has become operational, in pursuance of paragraph 10 of Council resolution 1989/68.

Network users are able to communicate electronically; to exchange documents and data; to scan a calendar of relevant world events; to search various data bases; to obtain up-to-date information on selected issues; and to communicate with other networks. Electronic bulletins on special subjects are also provided: the first one, on juvenile delinquency, was issued in late 1989, and the second, on victim services, in early 1990. Linkages are also being established with other United Nations data bases, such as UNBIS, the United Nations documents index. The network has been joined not only by the United Nations institutes and affiliated centres, but also by a growing number of national institutions, organizations and individual subscribers.

36. Unfortunately, this process has been limited by the shortage of resources. In view of the continuous requests for information received from Governments, organizations and individuals, the capability of the network needs to be appreciably increased if it is to provide the comprehensive, up-to-date information required by policy makers and researchers.

VII. IMPLEMENTATION OF UNITED NATIONS STANDARDS AND NORMS IN CRIMINAL JUSTICE

37. In accordance with paragraph 6 of Economic and Social Council resolution 1989/63, a pre-sessional working group on this subject was convened on 1 and 2 February, prior to the eleventh session of the Committee on Crime Prevention and Control. The Group stressed the importance of the United Nations standard-setting role and the need for effective implementation of the norms adopted internationally and offered guidelines and prototypes for national and international application. It noted the shortfalls that still existed, as revealed by United Nations surveys. Among the major obstacles found was the low priority attached to this area, the shortage of funds, inadequate human and professional resources, lack of co-ordinated action, and, often, lack of political will or public apathy. It was suggested that greater public awareness of the issues might elicit both increased support and additional resources.

38. Proposals as to how the United Nations could assist interested Governments in implementing the guidelines and standards included the development of effective procedures for their application in the context of economic and social development strategies and of the changes taking place in different parts of the world; strengthened technical co-operation and advisory services; incorporation of the United Nations instruments in national legislation and making them available in the appropriate language and form to all concerned; educational and promotional activities in schools, colleges and criminal justice academies, as well as in law faculties and among professional groups; enlisting the co-operation of the media; increasing community involvement and creating an atmosphere conducive to the observance of the principles embodied in the instruments, as well as lowering resistance against them; establishment or reinforcement of national committees for the promotion of United Nations norms and guidelines; and promotion of evaluative research.

39. Extrabudgetary resources were needed for these purposes, both from concerned Governments (e.g. through increased contributions to the United Nations Trust Fund for Social Defence) and from international funding agencies (i.e. through inclusion of projects in UNDP country programmes). It was also recommended that Governments should provide adequate support to the United Nations crime prevention and criminal justice institutes for national follow-up action, in order to meet the many requests for technical co-operation.

40. The Group suggested that a more effective way of monitoring the implementation of United Nations standards and norms should be found than the existing pattern of periodic reports by Governments in reply to United Nations questionnaires and the summaries prepared on them.

41. In view of the vital importance of implementation, it was suggested that the Committee prepare a comprehensive plan assessing the various standards and mutual assistance treaties according to priorities and on the basis of a thorough analysis, taking into account the resources available. The possibility of merging or clustering certain surveys was also suggested according to their respective objectives. In this connection, the Working Group distinguished four main types of standards: (a) those which deal basically with human rights issues; (b) those which promote or protect the integrity of criminal justice administration; (c) those which are essentially administrative; and (d) more general documents such as the Milan Plan of Action, the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 1/ and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. 2/

42. The Group accorded highest priority to the general documents and those dealing with human rights issues, and proposed a "programmatic implementation plan". It also held that an implementation body might be established, constituted of members of the Committee on Crime Prevention and Control or other acknowledged experts, who would make first-hand inquiries within countries.

43. Matters concerning the integrity of criminal justice systems required the training of personnel, provision of information and encouragement of greater accountability, as well as commitment at the ministerial and senior management levels. The United Nations institutes could play a leading role and report periodically on these activities. There was also need for a model syllabus for training in particular services or professions, and for in-service training in the operation of the criminal justice system as a whole.

44. The role of non-governmental organizations in propagating and helping to apply the United Nations standards and norms was also stressed, as was that of the United Nations information network, if it could be suitably expanded. The prompt publication of the proposed compendium of all United Nations standards relating to crime prevention and criminal justice was urged so that they could be widely disseminated in various languages. A voluntary fund for the implementation of the United Nations standards was also envisaged. The Working Group made specific recommendations, which were endorsed by the Committee on Crime Prevention and Control in a draft resolution, for adoption by the Council.

VIII. PROGRAMME PLANNING

45. In accordance with paragraph 7 of Council resolution 1989/68, a separate programme on crime prevention and criminal justice has been included in the medium-term plan for the period 1992-1997. The programme, approved by the Committee, contains three subprogrammes concerned, respectively, with (a) collaborative action against transnational crime; (b) crime prevention planning and criminal justice management; and (c) crime prevention and criminal justice norms and standards. In the strategies and activities proposed under these subject headings, stress has been placed on the achievement of concrete targets and on help to Governments in translating United Nations guidelines into practical reality. The major focus is also on intensified international co-operation in dealing with crime problems, transcending national frontiers and requiring concerted action.

IX. REVIEW OF THE FUNCTIONING AND PROGRAMME OF WORK

46. The Committee on Crime Prevention and Control, at its eleventh session, devoted special attention to the review of the functioning and programme of work of the United Nations in crime prevention and criminal justice, in pursuance of its resolution 10/1 and paragraph 9 of General Assembly resolution 44/72. The Committee unanimously approved a report on the need for the creation of an effective international crime and justice programme, which is to be submitted to the Eighth Congress (E/1990/31/Add.1) and a draft decision thereon (E/1990/31, chap. I, sect. C, decision 11/122).

47. The report emphasizes the seriousness of the world crime situation and the need for strengthened international co-operation, for which it outlines the main requirements. It notes the enormous human and material costs of crime and the impediments that it presents to sustained development, national stability and a better quality of life. It also draws attention to the alarming new forms of crime that are increasingly assuming transnational dimensions, undermining social peace and even international relations. Using advanced technological means and sophisticated organizational forms, organized crime, particularly drug trafficking, is outpacing official capacity for control. Countries debilitated by the economic crisis are an easy prey to crime. Regional and subregional integration is likely also to further transnational criminality if preventive steps are not taken.

48. The report highlights certain subjects as meriting special or continuing attention, including organized crime; violence; environmental offences; juvenile delinquency; protection of victims; criminal justice system management; community-based sanctions; upgrading of law enforcement activities; and training. It stresses the pivotal role of criminal justice in protecting the interests of society, safeguarding human rights and securing peaceful and democratic development. It calls for effective implementation of the United Nations instruments and standards and for practical initiatives, such as the development of model agreements and effective strategies for international co-operation.

49. The report states:

> "The United Nations is the only existing entity that has the general mandate and the international constituency necessary to provide countries with effective assistance in preventing and controlling national and transnational crime. It lacks, however, the organizational capacity to discharge this responsibity fully and effectively."

The report further suggests:

> "The logical administrative placement of such a programme would be either a new United Nations agency established and maintained with separate funding, or a new, major unit of the Secretariat."

50. In order to provide an appropriate institutional framework and permit the consolidation of the instruments for international co-operation in crime prevention and criminal justice, an international convention has been suggested. It is also proposed that a summit or ministerial meeting should be convened to mobilize the necessary political will and identify the strategy to be pursued in dealing more effectively with the burgeoning problems of national and transnational crime.

X. CONCLUDING REMARKS

51. The Committee in its report draws attention to the severe and persisting financial and other constraints under which this programme is operating, and urges remedial measures. This problem has been underscored in successive General Assembly and Economic and Social Council resolutions (e.g. Assembly resolutions 42/95, paragraph 5, 43/99, paragraph 10, and 44/72, paragraph 1; and Council resolutions 1986/11, paragraph 4, and 1987/53, paragraphs 3 (a) and 4). Other bodies, such as the Committee on Programme and Co-ordination, at its spring session of 1989, noted the disparity between the growth of mandated activities and the limited resources available for them. The regional preparatory meetings for the Congress also voiced their concern and urged appropriate action. In its resolution 1989/68, paragraphs 6 and 7, and 17 and 18, the Council made similar calls and requested, in paragraph 24, a progress report on their implementation.

52. In the context of the severe financial and budgetary constraints of the Organization, however, it has not been possible to increase the regular budget resources of the Crime Prevention and Criminal Justice Branch. The proposed redeployment of seven posts of the Department of International Economic and Social Affairs to Vienna, which might have given some room for adjustment within the United Nations Office at Vienna, was not approved by the General Assembly. It should be noted, however, that the temporary Congress posts have been filled, and in view of the importance of the programme, no professional posts were cut in the Crime Branch in the retrenchment exercise.

53. Given the new emphasis placed on social issues, and the multidisciplinary nature of effective crime prevention, including co-ordination with economic, public administration and development policies, the relevance of this programme to the mainstream of United Nations activities is clear.

54. The Committee on Crime Prevention and Control has assessed the problem and suggested a possible response, both in the near and longer-term. It has, inter alia, suggested that a new United Nations Agency should be established with separate funding, or a new major unit of the Secretariat. Member States will no doubt wish to consider whether either of these options are viable. The Committee has also called for a procedure for selecting issues for priority attention, for designing a programme for each issue, for assembling and deploying the resources needed for this purpose, and for monitoring and evaluating the results.

55. The Committee has underlined the importance of an energetic fund-raising campaign, with intensive consultations with Governments, in order to maximize their contributions to the programme. Several Governments have already demonstrated their interest in the programme by providing human and material support. For example, the Government of the USSR has contributed the services of an experienced professional; Italy and Japan have provided junior professional officers; and other Governments and organizations have provided short-term experts for special projects and host facilities for meetings. The pledging day scheduled for the Eighth Congress offers an opportunity for affirming the commitment to this work.

56. The forthcoming Congress provides a real opportunity to meet the challenge. The instruments and resolutions before it, all approved by consensus by the Committee as its preparatory body, will define the path which future action will take. The organizational arrangements are well advanced and the substantive platform has been carefully scrutinized by Governments and in the preparatory meetings. The draft resolutions before the Council should further promote empirically based and operationally tested strategies designed to curtail crime and victimization in its multifarious forms. The elements of concerted action are largely there, but if the Organization is to discharge its mandated leadership role and to assist vulnerable countries in the fight against crime, then it must have the capability to do so. The answer and the responsibility for providing it ultimately lie with Member States.

Notes

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sects. A and B.

2/ General Assembly resolution 40/34, annex.

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HUMAN RICHTS QUESTIONS

Allegations regarding infringements of trade-union rights in South Africa

Note by the Secretariat

1. The Economic and Social Council, in decision 1989/136 of 24 May 1989, requested the Ad Hoc Working Group of Experts on southern Africa to continue to study the situation relating to allegations of infringements of trade-union rights in South Africa and to report thereon to the Commission on Human Rights and the Economic and Social Council.

2. The Ad Hoc Working Group of Experts submitted to the Commission on Human Rights at its forty-sixth session a report (E/CN.4/1990/7) prepared in accordance with Commission resolutions 1989/3, 1989/4 and 1989/5. The section of the report that is relevant to the Council's request is reproduced in the annex to the present note.

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* E/1990/30.

Annex

IV. RIGHT TO WORK AND FREEDOM OF ASSOCIATION

Introduction

168. In accordance with Economic and Social Council resolution 1989/82, the Working Group continued to study the situation of trade-union rights in South Africa.

169. In its various reports since 1967, the Ad Hoc Working Group of Experts has regularly given an account of the deterioration in the conditions of black workers in South Africa. Moreover, on the basis of specific allegations addressed to it last year concerning infringements of trade-union rights, the Working Group came to the conclusion that trade-union rights have been curtailed by various measures under the state of emergency and have been subjected to further threats under the Labour Relations Amendment Bill and the Promotion of Orderly Internal Policies Bill. The information received and the evidence heard during the period under review have once again confirmed that members of the two major labour federations, the Congress of South African Trade Unions (COSATU) and the National Council of Trade Unions (NACTU), have continued to face severe repression during the period under consideration. The Labour Relations Bill, which has now become law, is considered by the two main trade union organizations as a severe handicap to most recognized forms of industrial action. Black membership of trade unions, which had developed tremendously over the last six years, now appears to have slowed down. On the other hand, it is no longer accurate to refer to these organizations as black unions, since they have also acquired white members.

170. In fulfilment of its mandate in accordance with Economic and Social Council resolution 1989/82, the Working Group analysed the situation, on the basis of information available to it, under the following four headings: right to work, situation of black workers, trade union activities, and action against trade unions.

171. The Working Group received considerable evidence and reports on the question of trade unions and their action with regard to the freedom of association, as well as the conditions of black workers under the security laws and emergency regulations currently in force.

172. Several witnesses referred to the matters under consideration, especially the representatives of the International Labour Organisation and the International Confederation of Free Trade Unions.

A. Right to work

173. In his testimony before the Ad Hoc Working Group of Experts in August 1989, the representative of the International Labour Organisation (ILO) (748th meeting) stated that it was very difficult to estimate the number of unemployed in South Africa, especially as information from the so-called independent "homelands" was

not available. None the less, according to the Report of the Director-General of the ILO, there were about 6 to 7 million persons endemically unemployed, a majority of whom was from urban areas.

174. Referring to the 1989 Special Report of the Director-General of the ILO on the Application of the Declaration Concerning Apartheid in South Africa and Namibia, the witness noted that increasing inflation in South Africa had coincided with very high unemployment during the period under consideration. He drew the attention of the Working Group to the fact that the late Governor of the Reserve Bank of South Africa had been in agreement with the economists employed by the major mining companies and other employers, as well as with academic analysts in South Africa, when they said that the economy of the country was in a perilous state and that the situation as regards employment was very serious. It was generally agreed that the solution did not lie in economic reforms, but rather in a major change in the structure of society as a whole through the total dismantling of the system of apartheid.

175. In this context, in his testimony before the Working Group, the representative of the Johannesburg-based Human Rights Commission (754th meeting) referred to the South African economy and traced the origins of the current crisis back over the past few years. He stated that when the South African Government had introduced the tricameral Parliament in 1984, it was massively rejected by the unenfranchised black majority, culminating in protests all over the country. To deal with the unrest, the Government had retaliated by sending the army into the townships. As the situation deterioriated further, the Government had declared a state of emergency. According to the witness, this marked the beginning of the capital outflow.

176. The same witness stated that, faced with a huge foreign debt, the South African Government unilaterally declared a moratorium on debt repayments on 1 September 1985. The flight of capital has continued ever since, and foreign investment has declined steadily. Subsequently, discussions took place between the South African Government and 34 major and 230 minor international banks, through the mediation of a Swiss ex-banker, Dr. Leutwiler, which resulted in a rescheduling of the debt repayment to mid-1990. Further, he said that only a massive injection of foreign capital could help the estimated 35 per cent unemployed. He also said that the cost of maintaining the system of apartheid amounted to around 50 per cent of the budget expenditure.

177. To restore confidence in order to encourage foreign capital investment, the witness said that it would be necessary to first create the right atmosphere by lifting the emergency. However, the prospect of anti-apartheid protest movements becoming even stronger than before deterred the South African Government from doing so. The unemployment of black workers increased as the economic crisis worsened.

178. Concordant oral and written testimonies stressed the exploitation of black workers, who were placed near white towns and forced to seek employment out of the so-called independent "homelands", as no jobs were available to them in the areas to which they had been forcibly removed.

179. The debate over the likely efficacy of sanctions in contributing to hastening the end of apartheid and facilitating non-violent change continued both domestically and internationally. 1/ No significant new sanctions were announced by South Africa's major trading partners, and there were signs that the rate of disinvestment by foreign companies was slowing down. Nevertheless, there was evidence that the existing sanctions as well as the reluctance of international financial institutions to make loans to South Africa, were beginning to have an economic and political impact (see para. 661 of the previous report of the Group (E/CN.4/1989/8)).

180. It was reported to the Working Group that a group of independent experts consisting of three eminent persons was appointed by the International Labour Organisation (ILO) in July 1989, to follow up and monitor the implementation of sanctions and other action against apartheid. 2/

B. Situation of black workers

181. The most serious invasion of the rights of workers in South Africa arises out of the new provision under the Labour Relations Amendment Act enacted on 12 August 1988, which enables employers to sue trade unions for damages suffered as a result of "stay aways". Workers can no longer channel their grievances effectively through their trade unions, and industrial action has become extremely difficult. In losing the right to strike, trade unions have also lost their bargaining power.

182. It was reported by the representative of the International Confederation of Free Trade Unions (ICFTU) (747th meeting) that employers have been given the right to negotiate with minority unions, thus undermining the principle that unions with a majority of 50 per cent plus one have the right to represent the whole workforce. As a result of this provision, employers are able to achieve retrenchment of workers with greater ease.

183. The witness also referred to the situation of farmworkers, who, not being affiliated to trade unions, are particularly open to abuse. He stated that brutality against farmworkers under the emergency laws has become a regular featur in rural South Africa. In addition, the following information submitted to the Working Group supports the allegations of the witness.

184. Farm workers on the largest citrus estate in Africa, near Zebediela in the Northern Transvaal, went on strike on 3 May 1989. The orange-pickers, numbering nearly 1,200, were demanding a 45 per cent wage increase over their current wages which ranged from R 65 to R 165 per month. The strike began when the State-owned Zebedelia Citrus Estates refused to recognize the National Union of Farmworkers (NUF). According to a union official, a Supreme Court application by the NUF for an order restraining farm management from evicting strikers and calling on police to intervene in the dispute was postponed on 15 May 1989. The management had agreed not to call in the police until the court application was dealt with, and try and settle the strike through negotiations. However, management did ask the police to intervene. A routine "unrest" report issued by police headquarters in Pretoria on 16 May 1989 said, "A large group of blacks refused to disperse when

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requested to do so by both management and police. Police used quirts and patrol dogs to disperse them. Twelve people were slightly injured". According to Mr. Tshaka Molestsane, NUF General Secretary, "The youths managed to run away but many of the workers were older people who could not escape. They were bitten by dogs and beaten with batons". 3/

185. The same witness further testified that children as young as eight years of age were working on some southern Transvaal farms for as little as R 2 per week. Men often earned around R 40 per month. The witness mentioned the case of Mr. Lacas S. Sibanyone, a farmworker in the Orange Free State, who reported to the ICFTU that his wages were R 8 per month and six bags of maize-meal per year. While at work, Mr. Sibanyone injured his left foot and went to a doctor, who gave him a medical certificate for seven days' sick leave. However, when he returned to work, he was dismissed for having been absent. He was given 30 days' notice to leave the farm and find alternative accommodation. As a farmworker, Mr. Sibanyone was largely outside the sphere of the law. The witness also described the "tot system", whereby farmworkers were partly paid in kind with alcoholic beverages. Contrary to the situation in the past, the unions can no longer prevent this type of payment by leading "product boycotts", which have now been made illegal under the newly amended labour laws.

186. It was reported that several quarry workers near Pretoria were facing a slow and painful death after contracting silicosis, a disease resulting from the inhalation of silica dust. Under a free health scheme conducted by the Community Health Awareness Project (CHAP), it was discovered that many of the 70 workers examined at Hippo Quarries Ferro Plant suffered from chest pains, breathlessness, chronic cough (sometimes with blood) and weight loss. It was alleged by the workers that, in order to avoid payment under the Workmen's Compensation Act, the company had never informed them of the results of the two X-ray tests performed annually. 4/

187. In addition to the unjust provisions of the Labour Relations Amendment Act, trade unions have been intimidated in many other ways for the purpose of discrediting and undermining them. The following incidents of intimidation were reported to the Working Group (747th meeting):

(a) In a report received from the Secretary of the South African Chemical Workers Union (SACWU), it was stated that four white men stopped their car and alighted near Mr. Stanford Mazikwana and his colleague, who were walking to their place of work. They attacked and shot Mr. Mazikwana dead. His colleague escaped unhurt and heard the men say that they were "Witwolves" ("white wolves", a white supremacy terrorist group).

(b) Again, in a letter from the "Witwolves", the co-ordinator of the South African Volkswagen shop stewards' council, Mr. John Homomo, received threats of "an unfortunate accident".

C. Trade union activities

188. In spite of the curtailment of trade-union rights under the new Labour Relations Amendment Act, trade unions have continued to stage protests. It was reported by the representative of the ILO (748th meeting) that, when "stay aways" occurred, they were on the basis of individual action and trade unions did not appear on the scene in their official capacity. This tactical exercise was undertaken in order to avoid victimization or being sued for damages for initiating industrial action.

189. The same witness stated that this placed employers in a very difficult situation, as they were unable to approach anyone for the purpose of negotiations on an official basis. The absence of official representation of the workers has led employers to start a move, together with the Congress of South African Trade Unions (COSATU) and the National Council of Trade Unions (NACTU), to seek the repeal of some of the recently enacted amendments to the Labour Relations Act.

190. He further added that COSATU and NACTU had held a joint summit meeting and, through their concerted efforts, representations had been made to the Government seeking removal of the offensive parts of the recent legislation. These concerted efforts had also been directed towards the South African Co-ordinating Council on Labour Affairs (SACCOLA), in an attempt to enlist its support in the campaign conducted by the trade unions in South Africa.

D. Action against trade unions

191. The representative of the ICFTU (747th meeting) stated that, under the new Labour Relations Amendment Act, trade unions had been under continuous attack. The Act was contrary to international labour standards and violated the democratic rights of trade unions to stage strikes.

192. The witness also testified that the Government had mounted a campaign against the trade union movement through widespread attacks on union offices and large-scale detentions, including police intervention with increasing violence in industrial disputes.

193. It was reported on 19 January 1989 that an independent forensic study of the Khotso House blast produced no evidence that the explosion had been caused by a bungled car bomb, as claimed by the South African police. Khotso House, head office of the South African Council of Churches (SACC), was blown up on 31 August 1988. The headquarters of the Congress of South African Trade Unions (COSATU) had been destroyed 16 months earlier. The Secretary of SACC, Rev. Francois Bill, said that the preliminary report prepared by a forensic expert had indicated that up to 75 kilos of explosive material, placed in or near the building's lift shaft, had been used in the blast. 5/

194. The same witness also reported that unprecedented media campaigns against trade unions had been launched during the period under consideration through the State-controlled radio and television services.

195. The witness further pointed out that, in spite of an agreement between COSATU and NACTU to refrain from implementing six clauses of the Act once it became law, the attitude of the employers had hardened and there was increasing collaboration between the Government and employers.

196. Of particular gravity were the curbs on the right to strike and the prohibition of "stay aways" for the same or a similar cause within 12 months. The power of the industrial courts had been curtailed under the new law, so workers claiming unfair dismissal no longer enjoyed the protection afforded to them through mediation in these courts.

197. In reply to a question from the Working Group on unfair dismissals, the representative of the ILO (748th meeting) stated that, previously, "unfair labour practices" had been well-developed concepts in the area of labour law in South Africa, because published principles of the ILO and decisions of the ILO technical bodies such as the Committee on Freedom of Association of the Governing Body, and the Committee of Experts on the Application of Conventions and Recommendations, were cited before and accepted by the South African Industrial Court. The Labour Relations Amendment Act was designed to circumscribe these concepts through various provisions. The witness further elaborated that the new law limited to a specific number the instances of unfair labour practices. Trade unions were resisting these curbs on their rights, despite the difficult situation created by the severe limitations placed on their field of activity (see E/CN.4/1989/8, para. 284).

198. The same witness was unable to give any information on the question of decisions by the Labour Appeal Court, which had been established by the Labour Relations Amendment Act, and stated that the industrial courts appeared to continue adjudicating in industrial cases.

199. Within two months of the promulgation of the new law, the witness further reported, local and foreign employers initiated law suits against trade unions for huge sums of money.

200. The same witness reported that, in response to a complaint to the ILO by COSATU against the Government of South Africa, which was referred to the Economic and Social Council, the Government of South Africa had refused to have the whole question of the curtailment of legitimate trade union activities subjected to an enquiry by the ILO fact-finding and conciliation commission, on the grounds that "internal remedies had not yet been exhausted". This therefore resulted in a situation whereby the campaign against the Labour Relations Amendment Act and its offensive provisions had taken place wholly within South Africa.

201. On 25 April 1989, Mr. Moses Mayekiso, General Secretary of the National Union of Metalworkers of South Africa (NUMSA), and four co-defendants were acquitted by the Rand Supreme Court at the close of a trial in Johannesburg that began in October 1987. It was reported that the Mayekiso trial had drawn international attention because convictions would have widened significantly the Government's ability to prosecute political opponents on treason and subversion charges for what had hitherto been considered allowable political dissent. Legal observers reportedly believed that convictions would have wiped out the line between such

dissent and criminal activity and subjected a wide range of union, church and community activists to potential treason indictments for non-violent organizing and protest. 6/

Notes

1/ International Labour Office, Special Report of the Director-General on the application of the Declaration concerning action against Apartheid in South Africa and Namibia (Geneva, ILO 1989), p. 38.

2/ Ibid.

3/ Weekly Mail, 19 to 25 May 1989.

4/ Sowetan, 21 April 1989.

5/ Weekly Mail, 13 to 19 January 1989.

6/ Sowetan, 26 April 1989.

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SOCIAL DEVELOPMENT

Capital punishment

Report of the Secretary-General

SUMMARY

The Economic and Social Council, in resolution 1745 (LIV), requested the Secretary-General to submit to the Council, at five-year intervals, starting in 1975, periodic analytical reports on capital punishment. The present document is the fourth such report, and is based on information concerning the use of and trends in capital punishment and on the legal changes, initiatives and results compiled by the Secretary-General since 1984.

In pursuance of Economic and Social Council resolution 1986/10, section X, paragraph 2 (a), the Secretary-General submitted to the Committee on Crime Prevention and Control at its tenth session a report on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/AC.57/1988/9 and Corr.1 and 2). In the future, in accordance with Economic and Social Council resolution 1989/64, the reports on the question of capital punishment and on the implementation of the safeguards will be combined.

* E/1990/30.

CONTENTS

		Paragraphs	Page
INTRODUCTION		1 - 7	3
I.	BACKGROUND	8 - 10	4
II.	THE CURRENT SITUATION	11 - 33	5
	A. Results of the fourth United Nations survey on capital punishment	11 - 15	5
	B. Legal changes and initiatives reported since 1984	16 - 33	6
III.	REVIEW OF THE STATUS OF CAPITAL PUNISHMENT	34 - 41	10
	A. Capital punishment in fact	34 - 38	10
	B. Capital offences in law	39 - 41	11
IV.	EFFORTS OF THE UNITED NATIONS OFFICE AT VIENNA	42 - 43	11
V.	RESEARCH AND STUDIES	44 - 48	12
VI.	CONCLUSIONS	49 - 54	13

Annexes

I.	RETENTIONIST COUNTRIES OR AREAS	16
II.	TYPES OF CAPITAL OFFENCES IN RETENTIONIST COUNTRIES	17
III.	SUPPLEMENTARY INFORMATION	21

INTRODUCTION

1. In its resolution 1745 (LIV), the Economic and Social Council requested the Secretary-General to submit to the Council, at five-year intervals, updated and analytical reports on the question of capital punishment. The first report submitted by the Secretary-General in 1975 covered the period 1969 to 1973 (E/5616 and Add.1 and Corr.1 and 2). The second report, prepared in 1980 and covering the period 1974 to 1979 (E/1980/9 and Corr.1 and 2, Add.1 and Corr.1 and Add.2 and 3), was also submitted to the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Caracas from 25 August to 5 September 1980, in accordance with Economic and Social Council resolution 1980/142. The third report, for the period 1979 to 1983 (E/1985/43 and Corr.1), was considered by the Council in 1985 and the Seventh United Nations Congress, held in Milan, Italy, from 26 August to 6 September 1985, pursuant to Economic and Social Council resolution 1984/45.

2. The present document is the fourth such report, prepared mainly on the basis of information received from Member States for the period 1984 to 1988. As requested by the Economic and Social Council in its resolution 1989/64, it will be one of the documents before the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in Havana from 27 August to 7 September 1990.

3. In preparing this report, the Secretary-General took into account General Assembly resolution 32/61, in which the Assembly reaffirmed its resolution 2857 (XXVI) and Economic and Social Council resolutions 1574 (L), 1945 (LIV) and 1930 (LVIII). As emphasized in those resolutions, the main objective was that of progressively restricting the number of offences for which the death penalty might be imposed, with a view to its abolition.

4. The Secretary-General wishes also to refer to Council resolution 1979/22, in which the Council, inter alia, expressed its concern about the slow progress in restricting the number of offences for which capital punishment might be imposed. The Council decided that it was essential for future reports on capital punishment to contain the fullest possible information on the use of the death penalty in all countries, and requested the Secretary-General to make every effort to elicit full responses from all Governments.

5. In his notes verbales of 4 October 1989 and 9 January 1990, the Secretary-General requested Member States to submit information. At the time of writing, 43 Member States have responded. 1/

6. In pursuance of Council resolution 1986/10, section X, paragraph 2 (a), the Secretary-General submitted to the Committee on Crime Prevention and Control at its tenth session a report on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/AC.57/1988/9 and Corr.1 and 2). That report was based on replies from 74 countries and noted that the review justified the concern expressed by the Human Rights Committee that inadequate progress has been made towards abolishing or limiting the application of the death penalty; 2/ that while the information provided suggested that the

safeguards were adhered to, certain steps were necessary to ensure full compliance; that the final imposition of a capital sentence should not prejudice the offender's right to benefit from a lesser penalty in cases where subsequent legislation provided for it; that there was a need for adjusting national legislations in order to implement the safeguard calling for the prohibition of execution of insane capital offenders. Attention was also drawn to the offender's right to have adequate time and facilities for the preparation of a defence. That right should be considered in generous terms, so as to guarantee to the offender more legal protection than in non-capital cases. The information received showed that appeals against capital sentences were still discretionary in many countries: further progress was needed world wide to ensure that in the criminal legislation of retentionist States appeals became mandatory. The report concluded that, to promote the implementation of the safeguards, the text should be widely disseminated among criminal justice administrators (if it has not been incorporated in extenso or followed up in national legislations).

7. In future, in accordance with Economic and Social Council resolution 1989/64, the reports on capital punishment and the implementation of the Safeguards will be combined.

I. BACKGROUND

8. Of the 49 Member States that replied to the questionnaire for the first capital punishment survey (1969-1973), 23 were "abolitionist" and 26 were "retentionist". Of the 74 States replying to the second survey (1974-1978), which requested more information than the first survey, 47 were "retentionist", 26 "abolitionist" (including 16 by law for all crimes and 10 for ordinary crimes only) 3/ and one "divided" on the issue. Of the 48 States replying to the third survey (1979-1983), 24 were "retentionist" and 24 "abolitionist" (including 19 by law for all crimes and five for ordinary crimes only). These figures are indicative only of a response pattern, not of the status of capital punishment throughout the entire world.

9. Taking the responses of the third survey into account, the total number of reported sentences and executions by region in the period 1979-1983 was as follows: North Africa and the Middle East (total number of responses: four), 31 capital sentences reported by two States and 29 executions by two States; Africa south of the Sahara (total number of responses: five), 77 capital sentences reported by two States and nine executions by one State; Asia and the Pacific (total number of responses: seven), 730 capital sentences reported by five States and nine executions by two States; Latin America and the Caribbean (total number of responses: 13), 189 capital sentences by two States and 23 executions by two States; Western Europe and other States (total number of responses: 17), 24 capital sentences reported by three States and no executions by two States.

10. The data received showed that the movement towards abolition had progressed somewhat. These conclusions were based on the decision of three countries to abolish capital punishment (France and Nicaragua for all crimes, El Salvador for ordinary crimes only) and an apparent decrease in the number of capital sentences

and executions. It was difficult, however, to draw general conclusions, since the number of responding States was declining and there were different countries responding to the three surveys. Moreover, several "retentionist" countries did not disclose the number of executions.

II. THE CURRENT SITUATION

A. Results of the fourth United Nations survey on capital punishment

11. For the fourth survey, covering the period 1984 to 1988, the situation became even more difficult. Replies were received from 43 Governments only: four from North Africa and the Middle East (Iraq, Qatar, Tunisia and Turkey); two from Africa south of the Sahara (Mauritius and Cape Verde); eight from Asia and the Pacific (Brunei Darussalam, Indonesia, Japan, Maldives, Republic of Korea, Singapore, Thailand and Tuvalu); nine from Latin America and the Caribbean (Argentina, Colombia, Cuba, Ecuador, Haiti, Panama, Peru, Uruguay and Venezuela); three from Eastern Europe (Byelorussian Soviet Socialist Republic, German Democratic Republic and Yugoslavia); and 17 from Western European and other States (Austria, Canada, Denmark, Finland, France, Germany, Federal Republic of, Greece, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Norway, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland and United States of America). Moreover, some of the "retentionist" States (Byelorussian SSR, Cuba and Iraq) did not disclose the number of executions, and some of the "abolitionist" States (e.g., Argentina, Cape Verde, Denmark and the Netherlands) provided only some basic information.

12. A more complete picture of world-wide trends is given in the report prepared by Roger Hood, submitted to the Committee on Crime Prevention and Control at its tenth session, and published as a special issue of the International Review of Criminal Policy. 4/ Additional information was also sought from non-governmental organizations, in pursuance of General Assembly resolutions 41/149, 42/143, 43/153 and 44/162 on human rights in the administration of justice. The recent survey prepared by Amnesty International was particularly useful. 5/

13. Of the 43 States responding to the fourth quinquennial survey, 21 were totally abolitionist (Argentina, Austria, Cape Verde, Colombia, Denmark, Ecuador, Finland, France, German Democractic Republic, Germany, Federal Republic of, Haiti, Liechtenstein, Luxembourg, Netherlands, New Zealand, Norway, Panama, Sweden, Tuvalu, Uruguay and Venezuela) (see annex III, table 5), 5 were abolitionist for ordinary crimes only (Canada, Malta, Peru, Spain and United Kingdom of Great Britain and Northern Ireland) (see annex III, table 6) and 17 retained capital punishment (Brunei Darussalam, Byelorussian SSR, Cuba, Greece, Indonesia, Iraq, Japan, Maldives, Mauritius, Qatar, Republic of Korea, Singapore, Thailand, Tunisia, Turkey, United States of America and Yugoslavia) (see annex III, table 4). Within the retentionist group, three countries (Brunei Darussalam, Greece and Maldives) may be considered as abolitionist de facto, since no executions had taken place for a considerable time.

14. An analysis of the 43 responding States by region shows that all the countries from North Africa and the Middle East and all the countries from Asia and the Pacific, with the exception of Tuvalu (abolitionist) retain capital punishment, although two countries of the latter region may be considered abolitionist de facto. All the responding States from Latin America and the Caribbean, with the exception of Cuba (retentionist) abolished the death penalty (Peru for ordinary crimes only). Similarly, of all the Western European and other States only the United States of America retained capital punishment, 4 countries are abolitionist for ordinary crimes only (Canada, Malta, Spain and United Kingdom) and the other 11 countries abolished the death penalty without exception. One of the Eastern European States responding (German Democratic Republic) abolished the death penalty for all crimes in 1987.

15. According to data collected by the United Nations and the Hood report cited above, which correspond to the most recent statistics provided by Amnesty International in January 1990, 6/ nearly half of all the countries in the world have abolished the death penalty either in law or in practice. The latest information provided by Amnesty International shows that 38 countries have abolished the death penalty for all offences, while 17 have done so for all but exceptional crimes such as wartime crimes. Thirty countries can be considered abolitionist de facto; they retain the death penalty in law but have not carried out any executions for the past 10 years or more. Ninety-five countries retain and use the death penalty. The list of countries that have abolished the death penalty in law since 1976 shows that, in recent years, at least one country a year on average has abolished the death penalty in law or, having done so for ordinary offences, has gone on to abolish it for all offences (see annex III, table 4). According to recent information, the new constitution of Namibia, expected to be adopted soon, contains abolition of the death penalty.

B. Legal changes and initiatives reported since 1984

16. Between 1984 and the end of 1989 a total of nine countries abolished the death penalty for all offences: Argentina (1984), Australia (1985), Cambodia (1989), German Democratic Republic (1987), Haiti (1987), Liechtenstein (1987), New Zealand (1989), Philippines (1987) and Romania (1989) (see annex III, table 4). Five of these States responded to the inquiry.

17. The German Democratic Republic reported that the State Council had decided on 17 July 1987 to abolish capital punishment. The change was made by order of the Peoples' Chamber, the legislative assembly of the German Democratic Republic, by virtue of the Fourth Criminal Law Amendment Act. This Act, which was published in the German Democratic Republic Law Gazette 7/ provides for all the required changes to the Penal Code and the Code of Criminal Procedure.

18. According to the reply of the German Democratic Republic, the following factors contributed to the abolition of capital punishment:

> "The complete abolition of capital punishment was prompted by the awareness that even without that form of punishment GDR criminal law has all the

necessary legal prerequisites to ensure the all-round protection of the State and its citizens from criminal encroachments. The development of the socialist State had progressed so far and, in particular, crime trends had changed so favourably that the situation permitted the elimination of the death penalty. Many years of court practice in the GDR confirmed that capital punishment is no longer needed, not even for the suppression of the gravest crimes. It was more than 10 years before its abolition that the death penalty was last imposed in the GDR. It was pronounced for the last time in 1976 against a Nazi and war criminal."

19. In Liechtenstein, capital punishment was abolished by the introduction of the Penal Code, which came into force on 1 January 1989. The reply of Liechtenstein stated that: "According to the previous law, the following crimes were punishable by death: homicide and high treason. However, the death penalty has not been applied for more than 200 years."

20. In New Zealand, the Abolition of the Death Penalty Act of 22 November 1989 removes the death penalty as the mandatory sentence for treason and substitutes it with life imprisonment. Similarly, the death penalty is removed as a sanction for offences under the Armed Forces Discipline Act 1971. The reply of New Zealand stated that:

"The death sentence was last imposed for the crime of murder in 1961. The Crimes Act 1961 had not come into force at the time the case was heard. The death sentence was last executed in February 1957, in respect of a conviction that took place in 1956. Between 1957 and the coming into force of the Crimes Act 1961 on 1 January 1962, it was the practice of the Executive Council to commute all death sentences to life imprisonment. No one has ever been convicted of treason under the Crimes Act 1961 nor was anyone ever sentenced to death under the Armed Forces Discipline Act 1971. The Abolition of the Death Penalty Act, therefore, merely seeks to legitimize New Zealand's de facto abolitionist status."

21. France, which had abolished the death penalty in 1981, reported the ratification, on 17 February 1986, of the Sixth Additional Protocol to the European Convention on Human Rights. The reply of France stated that:

"On 17 February 1986, France ratified Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for the abolition of capital punishment. Article 55 of the Constitution, which provides that correctly ratified treaties override laws, raises an obstacle to reinstatement of capital punishment in France."

22. In Canada, where in 1976 Parliament had removed the death penalty from the Criminal Code, there were legislative initiatives to restore capital punishment. In June 1987, a free vote was held in the House of Commons on the question of whether the death penalty should be reinstated. Reinstatement was rejected by a vote of 148 to 127.

23. Two retentionist States in North Africa and the Middle East reported policy changes regarding the restriction of the use of capital punishment and/or the reduction of the number of capital offences.

24. Tunisia reported that President Wine El Abidine Ben Ali, after taking office on 7 November 1987, suspended all executions of capital punishment. Consequently, none has been carried out after that date and the number of capital sentences has been substantially reduced from 19 in 1986 to six in 1987 and one in 1988. Those sentences have been commuted.

25. Although 222 persons have been sentenced to death in Turkey during the period under review, only two have been executed. According to the Government's reply, the last execution was carried out on 25 October 1984. Abolition of capital punishment is frequently the subject of public debate. The Turkish Bar Associations Union and a number of other associations advocate abolition. Nevertheless, instead of abolition, current policy aims at decreasing the number of felonies punishable by capital punishment. To this end, a draft bill has been submitted to Parliament, with a view to amending various provisions of the Criminal Code which provide for capital punishment.

26. The Byelorussian Soviet Socialist Republic reported that:

> "The Fundamentals of the Criminal Legislation of the USSR and the Union Republics have been prepared and published for discussion by the people. This document significantly narrows the range of offences for which capital punishment, an exceptional sanction, may be imposed."

According to the same document, the death penalty would not be imposed on women, men who at the time of sentencing have completed their sixtieth year of age, and persons who committed an offence punishable by death before their eighteenth birthday. On the other hand, under the existing legislation of the Byelorussian SSR, persons who prior to committing the offence had not attained their eighteenth year, and pregnant women, may not be sentenced to death. The Byelorussian SSR also reported that, in accordance with the Fundamentals of the Criminal Legislation of the USSR, the Ministry of Justice has begun work on the preparation of a new criminal code that would considerably narrow the list of offences punishable by death.

27. In 1986 Mauritius enacted the Dangerous Drugs Act, imposing the death penalty on every drug trafficker found guilty of importing drugs into the country, thereby increasing the number of offences for which capital punishment may be imposed.

28. Yugoslavia reported that capital punishment has been abolished in the Criminal Code of the Republic of Slovenia and that, although the Federal Penal Code contains a relatively large number of offences for which capital punishment can be imposed, it is, in practice, imposed only for homicide. Yugoslavia also reported that the provisions of article 6 of the International Covenant of Civil and Political Rights are consistently incorporated in the regulations in force as are the provisions of the safeguards guaranteeing protection of the rights of those facing the death

penalty. In addition, political and legislative bodies are expected to review a number of proposals for limiting, and even eliminating, capital punishment.

29. The highest number of judicial and statutory changes have been reported by the United States of America with respect to developments in various federal and state jurisdictions. As a general rule the abolition of the death penalty came as a result of court decisions rather than legislative action. Many court cases have centred on the lack of standards for imposing the death penalty and the resulting capriciousness with which some defendants have been sentenced. In 1984, for example, the mandatory death penalty statute of New York was struck down by virtue of a judicial ruling because it allowed no flexibility for mitigating factors that could have justified a lesser sentence. Similarly, in Massachusetts the death penalty was struck down in whole by the State Supreme Court, which held that the State law's provision for a death penalty only after a jury trial was unconstitutional because it was likely to discourage defendants from asserting the right to plead not guilty.

30. There has been a substantial number of statutory changes relating to capital punishment in the United States, partly aimed at its reinstatement after the judicial changes mentioned above, at changing the method of execution and at redefining capital offences (see annex II, sect. F).

31. The number of death sentences and executions in the United States has increased during the 1980s. On average, 300 persons have been sentenced to death during the period covered by this report. Since 1976, when the death penalty was reinstated by the United States Supreme Court, until the end of 1988, the United States had carried out a total of 104 executions: 11 between 1976 and 1983 and 93 between 1984 and 1988.

32. With respect to policy changes at the federal level, it was reported that, because of the two levels of jurisdiction (state and federal) in the United States judicial system, certain crimes may be punishable by death when tried by state courts, while this would not be the case in federal courts. Over the years, certain crimes that have had significant national impact have been added to federal jurisdiction, while still remaining prosecutable in the State Thus, while types of offences punishable by death in federal courts have increas the total number of offence types across federal and state jurisdictions remained constant. Since 1984, the United States Congress established federal jurisdiction for two new capital offences, which were defined as part of the Anti-Drug Abuse Act of 1988. The first offence is working in furtherance of a continuing criminal enterprise, that is, violation of federal drug laws as part of a continuing series of such violations by a person acting in concert with at least five other persons with respect to whom he occupies a leadership position and from which he derives substantial income, or trafficking in very large amounts of drugs and, during the course of such an offence, killing or ordering the killing of another person. The second offence is committing any federal drug felony and, during the course of such a crime, killing or ordering the killing of a federal, state or local law enforcement officer. There are 15 other offences in the federal criminal code - 13 types of murder, plus espionage and treason - that carry the death penalty but are not enforceable owing to a 1972 Supreme Court decision.

33. From the information provided by responding countries, it could be concluded that from the statutory legal point of view there is an increasing trend towards abolition. Six countries abolished the death penalty during the period covered by this report and one country undertook the international obligation not to reinstate it again. Moreover, two retentionist countries substantially reduced the number of death sentences and executions. Only one responding country (the United States of America) reported an increase in the number of executions. These findings differ from those of the third survey in 1985 (E/1985/43 and Corr.1, para. 28). However, apart from the United States and Iraq (the latter did not disclose the numbers of death sentences and executions), none of the countries where, according to Amnesty International and other reliable sources, 8/ most executions have actually been carried out during the past few years (in particular, the Islamic Republic of Iran, South Africa, China and Nigeria), responded to the inquiry.

III. REVIEW OF THE STATUS OF CAPITAL PUNISHMENT

A. Capital punishment in fact

34. The replies received from Governments do not provide sufficient data for a general analysis of the global use of capital punishment. Since the vast majority of retentionist States did not reply, this is particularly true for the actual number of death sentences and executions. Of the 17 responding States that retain capital punishment, three Governments (Byelorussian SSR, Cuba and Iraq) did not disclose any statistical data. Consequently, respective data are only available from the United States of America and 13 countries of three other regions (Eastern Europe, North Africa and the Middle East and Asia and the Pacific) (see annex III, table 7). Of these 14 States, no death sentence has been imposed in Maldives, and no execution has been carried out in Greece, Maldives, Qatar and Brunei Darussalam.

35. In the remaining countries altogether, 2,097 capital sentences and 246 executions were reported. Some 1,513 death sentences were imposed and 93 executions were carried out in the United States of America. Considerable numbers of death sentences were also reported by Turkey (222) and Thailand (190). Apart from the United States, the highest number of executions took place in Thailand and Tunisia (38 each).

36. The vast majority of death sentences and executions concerned men over 18 years of age. Women were sentenced to death in the United States, Turkey, Singapore, Japan and the Republic of Korea, but were executed in only four cases - two in Singapore, one in the Republic of Korea and one in the United States. Minors have been sentenced to death in the Republic of Korea and the United States, which also reported the only case in which a person under 18 years of age was actually executed.

37. Of the 2,097 capital sentences reported, 1,911 were imposed for offences against the person, above all for murder. Indonesia, Turkey, Tunisia and the Republic of Korea reported a total of 143 death sentences for offences against the State: Mauritius, Singapore and Thailand together reported 35 death sentences for drug offences, and Tunisia reported four death sentences for rape. Similarly,

175 of the 236 reported cases of executions related to offences against the person; Indonesia, Tunisia and the Republic of Korea reported a total of 16 executions for offences against the State, Singapore reported six executions for drug offences and one for the use of firearms, the Republic of Korea reported three executions for offences against property and Tunisia reported one execution related to rape.

38. On 31 December 1988, a total of 2,239 persons were reported to be on death row in eight countries. The United States accounted for 2,124, Japan reported 38, the Republic of Korea and Singapore 29 each, Indonesia seven, Mauritius five, Yugoslavia four and Tunisia three. Yugoslavia reported that legal proceedings for appeal or pardon were under way for all four persons remaining on death row.

B. Capital offences in law

39. All the replies from the 17 retentionist States and the five abolitionist States for ordinary crimes only, provided information on the types of offences subject to capital punishment. In the second category of abolitionist States capital punishment may only be imposed for treason, piracy and typical military offences such as mutiny or espionage. Spain reported that the new Military Criminal Code of 1985 has defined the expression "in times of war" in article 15 of the Spanish Constitution of 1978 as applying exclusively to an international war formally declared.

40. The responding retentionist States reported a wide range of offences against persons (homicide, rape, robbery etc.), against the State (treason, offences against the head of State, conspiracy to overthrow the Government) and typical military offences as subject to capital punishment. Some States also allow the death sentence for the submission of false evidence leading to the execution of an innocent person, illegal drug-trafficking, kidnapping, hijacking, abetting the suicide of a child or insane person, poisoning the public water supply, arson or flooding of dwelling structures, use of and trafficking in firearms and similar offences.

41. Not all the reported offences subject to capital punishment seem to comply with article 6 of the International Covenant on Civil and Political Rights, which stipulates that the death penalty may be imposed only for the most serious crimes. For example, offences aimed at the domination of a social class or at overthrowing the basic economic and social orders (as reported by Turkey), and theft in aggravated circumstances, sexual intercourse with a female relative under 15 or arousing of religious and sectarian feelings and propagation of Zionist ideas (as reported by Cuba), may not stand the test of a "most serious crime" in the sense of article 6 of the Covenant.

IV. EFFORTS OF THE UNITED NATIONS OFFICE AT VIENNA

42. By cable of 21 February 1989 to the Government of Barbados, the Director-General of the United Nations Office at Vienna joined the appeals of other organizations, in particular Amnesty International, for commutation of the death sentences imposed on two offenders for a crime committed when they were only

17 years old. This step was taken in view of the previous consultations with the Government on this matter and the responsibility of the United Nations Office at Vienna for monitoring compliance with the international standards prohibiting the imposition of the death penalty on persons under 18 years of age at the time of the crime, that is, the International Covenant on Civil and Political Rights (art. 6, para. 5), to which Barbados is a Party, as well as provision 3 of the United Nations safeguards guaranteeing protection of the rights of those facing the death penalty.

43. On 21 November 1989 the Barbados Parliament amended the Juvenile Offenders Act, raising the minimum age for the imposition of a death sentence to 18 years at the time of the offence, thus bringing its law into line with international criminal justice and human rights standards. Shortly before this change in the law, on 20 November, the Governor General of Barbados commuted four death sentences, among them those of the two offenders referred to in the preceding paragraph.

V. RESEARCH AND STUDIES

44. Only nine of the 43 replies from responding States contain references to governmental or academic research on capital punishment.

45. Canada reported that the Department of National Defence is conducting a review of its laws that provide for capital punishment. France cited two recent studies published by the Institute of Comparative Law of the University of Paris. The Federal Republic of Germany cited three recent articles in legal journals. Japan referred to two studies conducted by the Prime Minister's Office and by the Research and Training Institute of the Ministry of Justice. The reply from Spain cited seven studies on the death penalty published in that country since 1980. Tunisia referred to the annual report of the Tunisian League of Human Rights.

46. Yugoslavia reported that the Federal Secretariat for Legislation and Administration has occasionally undertaken research for official purposes and cited four major studies carried out by individual scholars.

47. The most comprehensive bibliography and documentation on governmental and non-governmental studies, statistical analyses and comparative research on capital punishment was provided by the United States. The reply stated that the United States Government does not have a special programme to promote and fund research on capital punishment, but that there are numerous federal mechanisms that fund well-conceived projects initiated by qualified researchers.

48. The United Nations Interregional Crime and Justice Research Institute (UNICRI) is preparing an International Bibliography on Capital Punishment. During the period covered by the report two editions were issued, in 1984 and 1987. The last covers approximately 50 years. The report prepared by UNICRI, entitled "Main trends in research on capital punishment, 1979-1983", which was mentioned in the previous report of the Secretary-General on capital punishment (E/1985/43 and Corr.1), was published in the Japanese Journal of Criminal Psychology in 1985, in

the Revue Internationale de criminologie et police technique in 1986 and in the Crime Prevention and Criminal Justice Newsletter: Special Issue on Capital Punishment, also in 1986. The report was updated to cover research carried out up to 1986 and was submitted to the International Conference on the Death Penalty, held in Siracusa, Italy, from 17 to 22 May 1987 (organized by UNICRI in co-operation with the International Institute of Higher Studies in Criminal Sciences). As part of the Conference, the Institute organized a panel on United Nations research and activities on capital punishment, which dealt with the current work of the Committee on Crime Prevention and Control, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities and UNICRI. The updated report on the main trends in research on capital punishment and the fourth edition of the International Bibliography on Capital Punishment were published, as part of the Acts of the Conference, in the Revue internationale de droit pénal in 1987. The report and the bibliography were reprinted in July 1988 in The Death Penalty - A Bibliographical Research 9/ and the report was also published in The Death Penalty: For and Against. 10/ The Australian Institute of Criminology has published a special issue of Trends and Issues in Crime and Criminal Justice on capital punishment, in February 1987.

VI. CONCLUSIONS

49. Twenty-six countries may be considered abolitionist, de facto, since no executions have taken place for 10 years or more. As a note of caution, however, it should be borne in mind that lengthy periods of de facto abolition do not always signify a permanent or irrevocable policy. There is always the possibility of executions being resumed, especially when national crises occur. In this respect, it should be noted that in 1980 the General Assembly began considering whether there should be a second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of capital punishment.

50. The most significant development since 1984 was the adoption of this Protocol by the General Assembly at its forty-fourth session (resolution 44/128). The world community has, therefore, for the first time in history, created a legal instrument aimed at the total abolition of capital punishment.

51. The Hood report concludes that many States tend to regard the ultimate sanction as an antidote to crime problems perceived as rampant. 11/ Nevertheless, a substantial number of countries that have introduced the death penalty for a wider range of offences have not enforced it. It therefore appears that capital punishment has a far greater symbolic than practical significance. Research has also failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment.

52. On the basis of an analysis of the replies to the questionnaire on the safeguards, in the light of other available information, the present report concludes that, while all responding countries stated that the provisions of the safeguards were communicated to judges, lawyers, police, prison officers and the accused, international experience demonstrated that still more needs to be done to ensure that the formalities of the law and procedure are invariably translated into

the realities of enforced rights. It also concludes that countries with discretionary capital punishment employ various mechanisms designed to limit executions to the few most serious cases. This raised the issue of whether the law and procedures resulted in equitable or in arbitrary and discriminatory enforcement. The findings of many criminological studies of decisions by prosecutors, juries, judges and courts of appeal have supported the conclusion that no legal formula can be devised that will eliminate unacceptable arbitrariness and discrimination in the use of the death penalty. Experience has therefore shown the necessity of monitoring the use of death penalty statutes.

53. Many countries have cited public opinion as one of the major reasons for retaining the death penalty. A number of countries, however, have abolished the death penalty and consistently resisted attempts to reinstate it, despite popular support for it, while one country has cited public opinion as the reason for abolition. There is therefore a clear need to distinguish between sporadic popular support for capital punishment and well-informed opinion.

54. Efforts should be made to reverse popular support for capital punishment, which is often a spontaneous reaction to certain forms of crime. In this respect, educational measures might be devised to emphasize respect for human life while stressing the findings of criminological research on erroneous perceptions about the deterrent effect of capital punishment.

Notes

1/ Argentina, Austria, Brunei Darussalam, Byelorussian Soviet Socialist Republic, Canada, Cape Verde, Colombia, Cuba, Denmark, Ecuador, Finland, France, German Democratic Republic, Germany, Federal Republic of, Greece, Haiti, Indonesia, Iraq, Japan, Liechtenstein, Luxembourg, Maldives, Malta, Mauritius, Netherlands, New Zealand, Norway, Panama, Peru, Qatar, Republic of Korea, Singapore, Spain, Sweden, Thailand, Tunisia, Turkey, Tuvalu, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Yugoslavia.

2/ Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

3/ Abolitionist for ordinary crimes means that there is no provision for capital punishment under ordinary criminal law, but that it may be imposed under military law or exceptional circumstances, such as war.

4/ Roger Hood, The Death Penalty, A World-Wide Perspective (Oxford, Clarendon Press, 1989).

5/ Amnesty International, When the State kills ..., The death penalty v. human rights (London, Amnesty International Publications, 1989).

6/ Amnesty International, The death penalty: list of abolitionist and retentionist countries (London, 1990), AI index: Act 50/01/90.

Notes (continued)

7/ German Democratic Republic, Law Gazette, part I (1987), No. 31, p. 301.

8/ See Amnesty International, When the State kills ..., p. 263; Hood, op. cit., pp. 43 ff.

9/ The Death Penalty - A Bibliographical Research (Rome, UNSDRI, 1988), publication 32.

10/ The Death Penalty: For and Against (Moscow, Yuridicheskaia Literature, 1989).

11/ Hood, op. cit.

Annex I

RETENTIONIST COUNTRIES OR AREAS

The following 95 countries or areas retain and use the death penalty for ordinary crimes: a/

Afghanistan
Albania
Algeria
Angola
Antigua and Barbuda
Bahamas
Bangladesh
Barbados
Belize
Benin
Botswana
Bulgaria
Burkina Faso
Burundi
Cameroon
Central African Republic
Chad
Chile
China
Congo
Cuba
Czechoslovakia
Democratic People's Republic of Korea
Democratic Yemen
Dominica
Egypt
Equatorial Guinea
Ethiopia
Gabon
Gambia
Ghana
Guatemala
Guinea
Guinea-Bissau
Guyana
Hungary
India
Indonesia
Iran (Islamic Republic of)
Iraq
Jamaica
Japan
Jordan
Kenya
Kuwait
Lao People's Democratic Republic
Lebanon
Lesotho
Liberia
Libyan Arab Jamahiriya
Malawi
Malaysia
Mali
Mauritania
Mauritius
Mongolia
Morocco
Mozambique
Myanmar
Namibia
Nigeria
Oman
Pakistan
Poland
Qatar
Republic of Korea
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Saudi Arabia
Sierra Leone
Singapore
Somalia
South Africa
Sudan
Suriname
Swaziland
Syrian Arab Republic
Taiwan Province of China
Thailand
Tonga
Tunisia
Turkey
Uganda
Union of Soviet Socialist Republics
United Arab Emirates
United Republic of Tanzania
United States of America
Viet Nam
Yemen
Yugoslavia
Zaire
Zambia
Zimbabwe

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a/ Most are known to have carried out executions during the past 10 years. For some countries, Amnesty International has no record of executions and is unable to ascertain whether or not executions have in fact been carried out.

Annex II

TYPES OF CAPITAL OFFENCES IN RETENTIONIST COUNTRIES*

A. North Africa and the Middle East

Iraq

Homicide committed in one or more of the following aggravated circumstances: premeditation, ambush, use of poison or explosives, killing of ascendants, one killing combined with another killing or attempt to kill, killing in preparation for the commission of a felony, despicable motives and brutality; sexual intercourse with a female relative under 15 years, theft in one or more aggravated circumstances, high treason, contact and communication with and assistance to the enemy in the occupation of national territories, spying in time of war, conspiracy to overthrow the Government by force, arousing of religious and sectarian feelings and propagation of Zionist ideas; offences of trafficking in narcotic drugs.

Qatar

Murder, submission of false information leading to the indictment or execution of an innocent person, serious offence against the Amir, bearing of arms against the State, instigating soldiers in time of war to serve the interests of an enemy State, divulging military secrets, drug trafficking.

Tunisia

Premeditated murder, rape with use of violence, rape of minors under 10, destruction by explosion of arsenals or other State property, offences against the external security of the State and the life of the head of State, treason, conspiracy to change the Government, overturning of a train, several military offences.

Turkey

Homicide, rape leading to the victim's death, false accusation leading to the accused person's execution, conspiracy in drug trafficking, repeated sentence to life imprisonment, kidnapping, high treason in time of war, offences aimed at the domination of a social class or at overthrowing the basic economic and social orders, attempt to overthrow the Government or constitution by force, using minors in committing a drug-related crime of a grave nature.

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* Summaries are based on replies received.

B. Africa south of the Sahara

Mauritius

Murder, plotting against the sovereign, stirring up war against the sovereign, plotting against established Government, importation of dangerous drugs.

C. Asia and the Pacific

Brunei Darussalam

Murder, abetting the suicide of a child or insane person, gang robbery with murder, waging or attempting to wage war against the Sultan, mutiny, drug trafficking, false evidence causing the execution of an innocent person, carrying firearms in security area, military offences such as assisting the enemy or failure to suppress mutiny.

Indonesia

Premeditated murder, larceny, theft resulting in serious injury or death, piracy resulting in death, intentionally depriving the President of life or liberty or rendering the President unfit to govern, collaborating with foreign Power with the intent to induce such Power to conduct hostilities or wage war against the country (when war actually ensues), intentionally rendering assistance to the enemy in time of war, attempted murder or kidnapping of the head of a friendly State, subversion, illicit drug trafficking, severe economic crimes undermining national economy, crimes concerning atomic energy; desertions and other offences of military criminal law.

Japan

Intentional homicide, causing death by endangering traffic, robbery, rape, duelling, poisoning public water supply, overturning of a train or causing aircraft to crash, seizure of aircraft, killing of a hostage, inducement of foreign aggression, conspiracy to insurrection, assistance to enemy, arson or flooding of inhabited structure, destruction by detonation, use of explosives.

Maldives

Premeditated murder, assassination of the President, act impairing the sovereignty, independence or territorial integrity of the Republic.

Republic of Korea

Murder, robbery causing death, piracy causing death, insurrection, inducement of foreign aggression, benefiting the enemy, use of and destruction by explosives, arson or flooding of dwelling structures, obstruction of traffic or use of drinking water which causes death or injury to others, insurrection, espionage, aid to the enemy, delivery or destruction of military installations, various military offences such as surrender, desertion, insubordination.

Singapore

Use of and trafficking in firearms and explosives, kidnapping, murder, abetment of suicide of child or insane person, gang robbery with murder, intentional false evidence leading to execution of the victim, waging or attempting to wage war against the Government, offences against the President, drug trafficking, various military offences such as assisting the enemy, mutiny.

Thailand

Murder, rape causing death, rape by carrying a gun which causes grievous bodily harm, indecent act with a child under 15 causing death, kidnapping, robbery causing death, cruel gang-robbery, malfeasance in office, violence against the King or Queen, insurrection, offences against the external security of the Kingdom, arson, drug trafficking, seizing of an aircraft, various military offences.

D. Latin America and the Caribbean

Cuba

Homicide in aggravated circumstances, rape of a relative, sexual intercourse with a female relative under 15, theft in aggravated circumstances, high treason, assisting the enemy, spying in time of war, conspiracy to overthrow the Government by force, arousing of religious and sectarian feelings and propagation of Zionist ideas, drug trafficking.

E. Eastern Europe

Byelorussian Soviet Socialist Republic

Premeditated murder under aggravating circumstances, rape, theft of State or public property in particularly large amounts, treason, espionage, acts of terrorism, including those against the representative of a foreign State, sabotage, banditry, accepting a bribe, attempt on the life of a member of the security police (militsija) or a member of the voluntary organization to support the police (narodnyje druzhinniki), hijacking of aircraft, actions interfering with the work of a correctional labour institution, disregard of a mobilization call, manufacturing or placing in circulation counterfeit money or securities, violation of the rules governing currency operations, several military offences.

Yugoslavia

Aggravated homicide, homicide in a cruel or perfidious manner, unscrupulous vengeance (blood revenge), killing of an official person safeguarding public order or an arrested person or several persons, aggravated robbery combined with premeditated murder, politically motivated assassination, grave violence threatening the security of the State or committed during mobilization or war, counterrevoluntionary attack against the State, grave political violence, armed

rebellion, terrorism, destruction of an important establishment of the national economy, sabotage, espionage, organizing and smuggling groups, individuals, weapons or ammunition into Yugoslavia, association for committing serious offences against the State, endangering air transport, death casualties as a result of intentional homicide, several military offences; genocide, war crimes against civilians, wounded and sick persons, prisoners, surrendered enemies, use of forbidden means of warfare, mass killings.

F. Western Europe and other States

Greece

Intentional homicide, explosion resulting in death, robbery, conspiracy against the integrity of the State, high treason, rendering military assistance to the enemy, embezzlement against the State, act of violence against the President of the Republic, sacrilege of dead and theft committed on a wounded or shipwrecked person, revolt of prisoners, placing obstacles obstructing the movement of aircraft, causing damages with an aircraft, causing the sequestration and capture of aircraft; several military offences.

United States

(a) Federal capital offences enacted after the Furman decision of the United States Supreme Court in 1972

Intentional killing as a result of major drug-trafficking offences, intentional killing of a law enforcement official, death resulting from aircraft hijacking, espionage by a member of the Armed Forces, military offences in time of peace and war such as rape, desertion, mutiny, aiding the enemy.

(b) In 37 of the 50 States (Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Flordia, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wyoming) capital offences include first-degree murder, aircraft piracy, treason, train wrecking, kidnapping, murder of a law enforcement offical.

Annex III

SUPPLEMENTARY INFORMATION a/

a/ The data presented in the following tables are not limited to the period 1984-1988.

Table 1. Status of capital punishment: abolitionist for all crimes a/

Country	Date of abolition	Date of abolition for ordinary crimes	Date of last execution
Australia	1985	1984	1967
Austria	1968	1950	1950
Cambodia	1989	..	..
Cape Verde	1981	..	1835
Colombia	1910	..	1909
Costa Rica	1877	..	..
Denmark	1978	1933	1950
Dominican Republic	1966	..	..
Ecuador	1906	..	..
Federated States of Micronesia	..	..	b/
Finland	1972	1949	1944
France	1981	..	1977
German Democratic Republic	1987	..	..
Germany, Federal Republic of	1949	..	1949
Haiti	1987	..	1972
Holy See	1969	..	..
Honduras	1956	..	1940
Iceland	1928	..	1830
Kiribati	..	..	b/
Liechtenstein	1987	..	1785
Luxembourg	1979	..	1949
Marshall Islands	..	..	b/
Monaco	1962	..	1847
Netherlands	1982	1870	1952
New Zealand	1989	1961	1957
Nicaragua	1979	..	1930
Norway	1979	1905	1948
Panama	..	..	1903
Philippines	1987	..	1976
Portugal	1976	1867	1849
Romania	1989	..	1989
San Marino	1865	1848	1468
Solomon Islands	..	1966	b/
Sweden	1972	1921	1910
Tuvalu	..	..	b/
Uruguay	1907	..	..
Vanuatu	..	..	b/
Venezuela	1863	..	..

Total: 38

Note: Two dots (..) indicate that data are not available.

a/ Countries whose laws do not provide for the death penalty for any crime.

b/ No executions since independence.

Table 2. Status of capital punishment: abolitionist for ordinary crimes only a/

Country	Date of abolition	Date of last execution
Argentina	1984	..
Brazil	1979	1855
Canada	1976	1962
Cyprus	1983	1962
El Salvador	1983	1973
Fiji	1979	1964
Israel	1954	1962
Italy	1947	1947
Malta	1971	1943
Mexico	..	1937
Papua New Guinea	1974	1950
Peru	1979	1979
Sao Tome and Principe	..	b/
Seychelles	..	b/
Spain	1978	1975
Switzerland	1942	1944
United Kingdom of Great Britain and Northern Ireland	1973	1964

Total: 17

Note: Two dots (..) indicate that data are not available.

a/ Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances such as wartime.

b/ No executions since independence.

Table 3. Status of capital punishment: abolitionist *de facto* a/

Country or area	Date of last execution
Andorra	1943
Anguilla	1820s
Bahrain	1977
Belgium	1950
Bermuda	1977
Bhutan	1964
Bolivia	1974
British Virgin Islands	..
Brunei Darussalam	1967
Cayman Islands	1928
Comoros	b/
Côte d'Ivoire	..
Djibouti	b/
Greece	1972
Grenada	1978
Hong Kong	1966
Ireland	1954
Madagascar	1958
Maldives	1952
Montserrat	1961
Nauru	b/
Nepal	1979
Niger	1976
Paraguay	1928
Samoa	b/
Senegal	1967
Sri Lanka	1976
Togo	..
Trinidad and Tobago	1979
Turks and Caicos Islands	..
Total: 30	

Note: Two dots (..) indicate that data are not available.

a/ Countries and areas that retain the death penalty for ordinary crimes but have not executed anyone during the past 10 years or more. In keeping with the system of classification used by the United Nations in its quinquennial reports on capital punishment, all of these countries and areas can be considered abolitionist *de facto* in that they have not carried out executions for the past 10 years or more. However, death sentences have continued to be imposed in a number of these countries and areas and not all of them have a policy of regularly commuting sentences.

b/ No executions since independence.

Table 4. Countries that have abolished the death penalty since 1976

Year	Country	Offences for which the death penalty was abolished	
		All offences	Ordinary offences
1976	Canada		x
	Portugal	x	
1978	Denmark	x	
	Spain		x
1979	Brazil a/		x
	Fiji		x
	Luxembourg	x	
	Nicaragua	x	
	Norway	x	
	Peru		x
1981	France	x	
1982	Netherlands	x	
1983	Cyprus		x
	El Salvador		x
1984	Argentina b/	x	
	Australia c/		x
1985	Australia d/	x	
1987	German Democratic Republic	x	
	Haiti	x	
	Liechtenstein	x	
	Philippines	x	
1989	Cambodia	x	
	New Zealand	x	
	Romania	x	

a/ Brazil had abolished the death penalty in 1882 but reintroduced it in 1969 while under military rule.

b/ Argentina had abolished the death penalty for all offences in 1921 and again in 1972 but reintroduced it in 1976 following a military coup.

c/ In 1984, the death penalty was abolished in Western Australia, the last Australian state to retain the death penalty for ordinary offences.

d/ In 1985, the death penalty was abolished entirely in Australia when the state of New South Wales abolished it for piracy, treason and arson at military and naval establishments, the only remaining capital offences.

Table 5. Abolitionist countries for all crimes: dates of abolition, last sentence and last execution and changes reported

Responding States	Date of abolition	Date of abolition for ordinary crimes	Date of last sentence	Date of last execution	Changes reported
Asia and the Pacific					
Tuvalu	Before independence		..	..	..
Africa south of the Sahara					
Cape Verde	..	..	..	..	..
Latin America and the Caribbean					
Argentina	..	..	..	..	..
Colombia	1910	..	..	..	..
Ecuador	1897	..	..	..	..
Haiti	1987	..	..	..	..
Panama	1918	..	..	..	..
Uruguay	1907	..	..	..	..
Venezuela	1863	..	..	..	..
Eastern Europe					
German Democratic Republic	1987	..	1976	..	Abolition without restriction on 17 July 1987 because of development of socialist State.
Western Europe and other States					
Austria	1968	1950	..	..	..
Denmark	..	..	..	..	..
Finland	1972	1949	..	..	..
France	1981	Ratification of Sixth Additional Protocol to European Human Rights Convention on 17 February 1986.			
Germany, Fed. Rep. of	1949	..	..	1949	..
Liechtenstein	1989	..	Eighteenth century	Eighteenth century	Abolition by new penal code on 1 January 1989, but in fact death penalty had not been applied for more than 200 years.
Luxembourg	1979	..	..	..	..
Netherlands	1983	..	..	..	..
New Zealand	1989	1962	1961	1957	Abolition on 22 November 1989.
Norway	1979	1905	..	..	..
Sweden	1973	1921	..	..	..

Note: Two dots (..) indicate that data are not available.

Table 6. Abolitionist countries for ordinary crimes only: dates of abolition and last execution; types of remaining capital offences

Responding States	Date of abolition for ordinary crimes	Type of capital offences	Date of last execution	
			For ordinary crimes	For other crimes
Latin America and the Caribbean				
Peru	1979	Constitution: treason in case of external war.	..	..
Western Europe and other States				
Canada	1976 (reinstatement in 1987 rejected by 148 to 127 votes)	National Defence Act: misconduct in presence of enemy, offences related to security, prisoners of war, espionage, mutiny etc.	1962	1944
Malta	..	Armed Forces Act: siding with the enemy, communication with the enemy, mutiny, failure to suppress mutiny.	..	..
Spain	1978	Constitution and Military Code (applicable only in the case of international war formally declared): treason, espionage, rebellion, sedition, offences against official military duties (insubordination, cowardliness etc.) and assault against military authorities.	..	..
United Kingdom of Great Britain and Northern Ireland		Treason, piracy with violence, assisting the enemy.	1964	..

Note: Two dots (..) indicate that data are not available.

Table 7. Retentionist countries: number of sentences imposed and executions carried out and type of offence, 1984-1988

Responding States	Number of persons sentenced					Number of persons executed					Type of capital offences		Number of persons remaining under death sentence 31 December 1988
	Total	Sex M	Sex F	Age Under 18	Age Over 18	Total	Sex M	Sex F	Age Under 18	Age Over 18	No. sentences	No. executions	
North Africa and the Middle East													
Iraq	..	..	..	..	..	..	..	..	..	..	..	..	..
Qatar	2	2	0	0	2	0	0	0	0	0	2P	0	0
Tunisia	45	45	0	0	45	38	38	0	0	38	24P/17B/4R	29P/8S/1R	3
Turkey	222	219	3	0	222	2	2	0	0	2	101P/121S	2P	..
Africa south of the Sahara													
Mauritius	6	6	0	0	6	2	2	0	0	2	3P/3D	2P	5
Asia and the Pacific													
Brunei Darussalam	3	3	0	0	3	0	0	0	0	0	3P	0	0
Indonesia	4	4	0	0	4	2	2	0	0	2	2PR/1S/1D	1PR/1S	7
Japan	24	23	1	0	24	10	10	0	0	10	24P	10F	38
Maldives	0	0	0	0	0	0	0	0	0	0	0	0	0
Korea (Republic of)	33	32	1	2	31	29	28	1	0	29	29P/4S	19P/7S/3PR	29
Singapore	37	35	2	0	37	26	24	2	0	26	22P/15D	19P/6D/1F	29
Thailand	190	..	..	..	..	38	..	..	..	..	17SP/17D	..	..
Latin America and the Caribbean													
Cuba	..	..	..	..	..	..	..	..	..	..	..	..	..
Eastern Europe													
Byelorussian SSR	..	..	..	..	..	..	..	..	..	..	..	..	..
Yugoslavia	18	18	0	0	18	6	6	0	0	6	18P	6P	4
Western Europe and other States													
Greece	..	..	..	..	..	..	..	..	..	..	..	..	..
United States	1 513	1 488	25	7	1 506	93	92	1	1	92	1 513P	93P	2 124

Note: P: person; PR: property; S: State; R: rape; D: drugs; F: firearms; O: other. Two dots (..) indicate that data are not available.